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TAX LAWS OF INDIANA AS THEY RELATE TO CORPORATIONS FOR PROFIT

By HARRIET W. BOUSLOG* and ROBERT C. BROWN†

The early tax laws of this country taxed the property of corporations on the same basis as individual property,¹ but with the growth of the corporate structure of business organization, special tax laws relating to corporations were generally enacted by the state and federal governments. The limitations on the general power of the state and federal government to tax individuals to a large extent likewise limit the power to tax corporate property. Similarly, tax statutes specially applicable to corporations are construed according to the general principles laid down for the construction of general tax statutes.

Taxes have been defined as

"public burdens, of which every individual may be compelled to bear his part, and that in proportion to the extent of the protection he receives or the amount of property held by him, as the will of the legislature may direct."²

Unless the intent of the legislature is otherwise clear, private corporations are included within the scope of general taxing laws, even if the statute does not in terms refer to corporations.³ Thus the definition given above includes corporations within the meaning of the word "individual."

All taxation imposed by the State of Indiana, including corporate taxation, is subject to certain constitutional limitations imposed by the Constitution of the United States and the Constitution of Indiana.

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¹ Cooley, *The Law of Taxation*, 4th ed., 1924, vol. 2, pp. 1628-9.

² *Hanna v. Board*, 8 Blackf., 352, 355 (Ind., 1847). See also *Boyer v. Jones*, 14 Ind. 354 (1860).

³ Cooley, *op. cit.*, note 1, vol. 2, pp. 1634-5.

GENERAL FEDERAL RESTRICTIONS ON STATE TAXATION

The Commerce Clause. The first restriction imposed by the Federal Constitution on the power of Indiana, or any other state, to levy taxes on corporations is contained in Article 1, Section 8 of the Constitution, which provides that

"The Congress shall have power . . . (3) To regulate commerce with foreign nations, and among the several States."

So far as the taxation of corporations is concerned, this provision simply restricts the power to tax corporations engaged in interstate or foreign commerce. Although the commerce clause does not prohibit taxation of corporations carrying on such commerce, the taxes imposed must not interfere with or be unduly burdensome on it. A few examples will show some instances in which taxes have been held to be thus burdensome.

A state law which imposes a franchise tax upon a foreign corporation which carries on no activities within the state except to store bags of nitrate shipped from foreign countries until sold in the original package to customers outside the state, has been held to be in violation of the commerce clause, as imposing a burden upon foreign commerce.⁴ The court regarded the fact that the corporation objecting to the tax was qualified to do business in the taxing state, as immaterial, since the only business done was foreign commerce.

The case of *International Paper Company v. Commonwealth of Massachusetts*, holds that a state cannot impose an excise tax, based upon authorized capital stock without limitation of amount, as a condition precedent to admitting a foreign corporation engaged in interstate commerce to do business within the state. The court held that the commerce clause gives Congress the exclusive power to regulate interstate commerce, and a state statute which either directly or indirectly, or by necessary operation, burdens such com-

⁴ *Anglo-Chilean etc. Corporation v. Alabama*, 288 U. S. 218 (1933).

⁵ 246 U. S. 135 (1918).

merce is invalid.⁶ Thus the imposition of such a burdensome tax as a condition precedent to the right to do business, part of which was interstate, interfered with interstate commerce and was therefore unconstitutional.

Property used in interstate commerce may be taxed by a state; but where apportionment is necessary in order to compute the value of such property fairly attributable to the state (which is often the case, especially with respect to rolling stock), the method of apportionment must be reasonably fair, or an unconstitutional burden upon interstate commerce will be imposed. Thus an attempt to determine the value of tank cars used in a state by an apportionment according to the mileage of track within and without the state over which the cars ran was held unconstitutional, on the ground that this method of apportionment was so unfair as to violate the commerce clause, and also the due process clause hereafter considered.⁷

It is clearly settled, then, that a tax on a corporation engaged in interstate commerce must be commensurate with the privilege granted by the state imposing such tax, (which does not include the right to engage in interstate commerce), or the tax constitutes an interference with such commerce.

A tax on gross receipts derived from interstate and foreign commerce is a burden on interstate commerce,⁸ but a tax on net income earned from interstate commerce, if reasonable, will be upheld.⁹

The Contracts Clause. The contracts clause of the Federal Constitution is contained in Article 1, Section 10, and provides that

"No State shall . . . pass any . . . law impairing the obligation of contracts."

⁶ The actual holding of the court, however, is not as broad as this statement, since a tax based on authorized capital of a foreign corporation is itself unduly burdensome. Cf., *Airway etc. Corporation v. Day*, 266 U. S. 71 (1924).

⁷ *Union Tank Line Co. v. Wright*, 249 U. S. 275 (1919).

⁸ *New Jersey etc. Co. v. State Board*, 280 U. S. 338 (1930).

⁹ *U. S. Glue Co. v. Oak Creek*, 247 U. S. 321 (1918).

The contracts clause is violated if a state imposes a tax on the property of a corporation to which it has granted an express exemption from taxation in the corporate charter.¹⁰ However, a state may reserve the power to amend charters granted by it to corporations, either by a provision in the constitution or in the general statutes enacted before the granting of the corporate charter; and when a state has reserved such power, statutes exempting corporations from taxation may be repealed, and other changes in the charters may be made.¹¹

The contracts clause, then, comes into play as a limitation on the taxing power of the state, only when the state has by charter of the corporation granted it certain exemptions or maximum rates of taxation, without reserving the power to amend the charter. Inasmuch as the Indiana Constitution provides that all property excepting such only for municipal, educational, literary, scientific, religious or charitable purposes as may be especially exempted by law, shall be taxed, there can be no exemptions in corporate charters, and consequently the contracts clause does not limit Indiana's right to tax.

The Due Process and Equal Protection of the Laws Clauses.

Other limitations on the taxing power of the state are contained in the Fourteenth Amendment of the Federal Constitution which provides that

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

¹¹ Tomlinson v. Jessup, 15 Wall. 454 (1872); Miller v. State, 15 Wall. 478 (1872). It may be noted that the proposition that a state may bind itself by a contract for tax exemption is dubious on principle, and not very happy in results. While the Supreme Court seems committed to the proposition, it has attempted to limit it as rigidly as possible by strict construction of such alleged contracts.

¹⁰ Mobile etc. R. Co. v. Tennessee, 153 U. S. 486 (1894).

From this amendment, which includes both the due process clause and equal protection of the laws clause, is derived the most fundamental of all principles of tax construction, that is, taxes must be imposed for a public purpose. Taxes are not consensual obligations, and consequently it is unfair to compel the taxpayer to pay, without any consent on his part, for the benefit of others. The question of whether or not the purpose for which a tax is levied is public or private is a judicial question. On the other hand, the judgment of the legislature ought to be given a great deal of weight because it is a close question of fact, and the tendency of modern decisions is to give rather more weight to the judgment of the legislature.

A statute authorizing cities to loan their credit to private ventures by the issuing of bonds is unconstitutional as it is taking property of citizens under the guise of taxation for a non-public purpose, and consequently is lacking in due process of law.¹²

The Federal Constitution does not, however, prohibit territorial inequality of taxation within a state and thus a state may impose a tax on the citizens of one subdivision of the state and distribute the proceeds for the benefit of other subdivisions, if there is some reasonable justification for this apparent inequality.¹³

A state may not, consistently with due process, levy a tax on tangible personal property of residents which is permanently located outside the state of domicile.¹⁴ This rule has been largely extended by more recent cases to intangible property, and is applicable, for the most part, to inheritance as well as to property taxes.¹⁵

In levying a tax on a foreign corporation the state may take into consideration property located outside the state which is an integral part of the business of the corporation,

¹² *Citizens S. & L. Ass'n v. Topeka*, 20 Wall. 655 (U. S., 1874).

¹³ *Dane v. Jackson*, 256 U. S. 589 (1921).

¹⁴ *Union Ref. Transit Co. v. Kentucky*, 199 U. S. 194 (1905).

¹⁵ See Brown "Multiple Taxation by the States—What Is Left of It" (1935) 48 Harv. L. R. 407.

since such property, because of its physical or organic connection with the property in the state actually adds to the value of the property.¹⁶

The United States Supreme Court in the case of *Quaker City Cab Company v. Pennsylvania*¹⁷ laid down the proposition that a corporation is a citizen within the meaning of the equal protection clause of the Federal Constitution. It was, therefore, held that a state cannot impose a tax on gross receipts of corporations from operating taxicabs when individuals conducting the same business are not so taxed. The District Court of North Carolina, on the authority of this case, held that a state may not impose a tax upon shares of stock in foreign corporations held by domestic corporations when a similar tax is not imposed upon property held by individuals.¹⁸ These cases seem wrong on principle, as there seems to be no logical reason why the state may not classify corporations and individuals separately for taxation purposes, in view of the privilege given to those identified with corporations to carry on the business in this form.

A state may classify property for taxation, to the extent that its constitution and law permits. Thus the property of a street railway, in view of its peculiar character, may be classified as personal property for purposes of taxation without violating the due process clause of the Fourteenth Amendment.¹⁹

A tax on such proportion of the net income of individuals or corporations as the fair cash value of the real and tangible personal property in the state is to the fair cash value of the entire real and tangible personal property has been upheld in some cases and rejected in others. The test of the validity of such a tax is whether this method of apportioning the total net income for tax purposes operates fairly or

¹⁶ *Adams Express Co. v. Ohio*, 165 U. S. 194, rehearing denied, 166 U. S. 185 (1897). Where, however, such physical or organic connection is lacking, the outside property cannot properly be taken into account. *Fargo v. Hart*, 193 U. S. 490 (1904).

¹⁷ 277 U. S. 389 (1928).

¹⁸ *Garysburg Mfg. Co. v. Pender*, 42 F. (2d) 500 (1930).

¹⁹ *Puget Sound P. & L. Co. v. King County*, 264 U. S. 22 (1924).

whether its operation in a particular case is arbitrary and unreasonable. The burden of showing the unfair operation is upon the taxpayer, but if he is able to show that as to him the amount of the tax is in gross excess of the amount earned in the state, the tax is held invalid as being repugnant to the Fourteenth Amendment.²⁰ If, however, the taxpayer is unable to show that the statutory method operates unfairly in its application to his case, the tax will be upheld.²¹ The effect of these decisions is that any formula not inherently arbitrary will be sustained unless the taxpayer presents forceful evidence that it produces arbitrary and unfair results as applied to his particular case.

In order to recover taxes paid under an illegal taxing statute, most states require that the taxes must have been paid under coercion, that is, the corporation or other taxpayer must show that the taxes have been demanded or an effort has been made to collect them, or that some extraordinary method of collection is provided, such as distraint of property, for failure to pay, or that the exaction of a fine would have resulted from non-payment.²² As to taxes paid in Indiana, the right to refund depends not on whether taxes were paid under coercion but upon the statutory right, which is exclusive.²³ The statute provides that

"no taxes shall be considered as having been wrongfully paid or as having been wrongfully assessed when the same were extended or assessments made as the judgment of taxing officers authorized to make the same, and concerning which no complaints were registered at the time same were made either by application for rehearing or by any appeal."²⁴

While the Indiana statute thus in effect requires that a protest be made, the procedure followed must be that prescribed

²⁰ *Hans Rees' Sons v. North Carolina*, 283 U. S. 123 (1931).

²¹ *Underwood Typewriter Co. v. Chamberlain*, 254 U. S. 113 (1920).

²² *Gibson Abstract Co. v. Cochise*, 100 Pac. 453 (Ariz., 1909); *In re Delhi*, 94 N. E. 874 (N. Y., 1911); *Connolly v. San Francisco*, 127 Pac. 834 (Cal., 1912); *Brinson v. Crawford County*, 153 S. W. 828 (Ark., 1913).

²³ *Board v. Milikan*, 207 Ind. 142, 190 N. E. 185 (1934).

²⁴ *Burns' Ann. Stat.*, 1933, Sec. 64-2819.

by the taxing statutes, but no requirement of payment under duress seems to be made.

Although the privileges and immunities clause contained in Article 4, Section 2, of the Federal Constitution is a further limitation on the states in regard to the taxing of individuals, a corporation is not a citizen within the meaning of this clause.²⁵ Consequently, the privileges and immunities clause of the Federal Constitution does not limit the power of the states to tax corporations.

In general, then, the inherent power to tax, the prohibition against taxing real or personal property permanently located outside the state, the restrictions imposed by the clause relating to commerce on the power of the states to tax; the general rules as to what property is subject to taxation; the rule that the taxable situs of real property is where it is located, of tangible personal property where it is permanently situated, and of intangible personal property where the owner is domiciled;²⁶ and the general rules as to express exemptions from taxation, are the same for the taxation of corporations as in the case of individuals or associations other than corporations.

RESTRICTIONS ON TAXATION IMPOSED BY THE INDIANA CONSTITUTION

Constitutional Provision. The limitation on the power to tax corporations in the Indiana Constitution is contained in Article 10, Section 1, which provides that

"The General Assembly shall provide by law, for a uniform and equal rate of assessment and taxation and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, except such only for municipal, educational, literary, scientific, religious or charitable purposes, as may be specially exempted by law."

²⁵ *Paul v. Virginia*, 8 Wall. 168 (U. S., 1868); *Farmers & M. Ins. Co. v. Hurrah*, 47 Ind. 236 (1874).

²⁶ See *Brown*, op. cit., note 15.

The equality clause contained in the grant of the taxing power to the legislature above applies to corporations only to the extent that taxation of a certain class of corporations must not discriminate between certain corporations within the designated class. It is to be remembered, however, that the above provision applies only to property taxes, and a corporate or other franchise tax, being an excise tax, is not subject to the limitations imposed on the exercise of the taxing power by this provision. Thus, the state has very broad powers in the taxing of the franchises of its corporations. A summary of a few Indiana cases involving this constitutional provision will help to show its meaning, as interpreted by our courts.

The Supreme Court of Indiana has set forth the doctrine that

"The power of taxation is essential to the very existence of government, and it is inherent in the state. It is a legislative power, and is limited only by the provisions of the constitution."²⁷

In *Lowe v. Board*²⁸ an action was brought by taxpayers against the White County Board of Commissioners to enjoin all proceedings for the construction of gravel roads in Monon Township in White County under certain acts of the legislature, on the ground that the act was unconstitutional and void because it was an improper and unjust exercise of the taxing power, and because it was manifestly unequal and grossly unequitable. The court in denying relief stated that

"A uniform tax upon all property, real and personal, in a taxing district, according to its appraised value for taxation, for the construction and repair of roads, is for a governmental purpose, the same as a tax to support the public schools of the state, or to maintain the different departments of government. The remedy for such taxation, if unwise, or unjust, or oppressive, must be sought from the Legislature, and not from the judicial department of the state."²⁹

²⁷ State v. Halter, 149 Ind. 292, 47 N. E. 664, 666 (1897).

²⁸ 156 Ind. 163, 59 N. E. 466 (1901).

²⁹ 59 N. E. 467-8.

A property tax for state purposes must be equal and uniform throughout the state; a tax for county purposes must be uniform throughout the county; and a tax for township purposes must be uniform throughout the township.³⁰ However, this requirement as to uniformity is complied with when the same basis of assessment is fixed for all property and the same rate of taxation is fixed within the district subject to taxation.³¹

The state may, for the purpose of taxation, class the rolling stock of a railroad company as realty rather than personalty, as it is intimately connected with the purpose and uses of its track and superstructure.³²

A statute which taxed foreign fire insurance companies one dollar for every hundred dollars of the excess of receipts over losses for business done in counties having cities with paid fire departments for the benefit of a firemen's pension fund was held to be in violation of Article 10, Section 1, of the Indiana Constitution for the reason that the tax is local and not uniform.³³ Only four counties in the state were benefited, as there were paid fire departments in cities located in only those four counties, and consequently the burden of the tax fell only on the foreign fire insurance companies doing business in those four counties.

The court, it seems, might be criticized for its ruling that for the purposes of taxation all foreign insurance companies must be classified together. Upon the general theory that the power of taxation is exercised upon the supposition of an equivalent rendered in the protection of the property and person of the taxpayer, it seems that the court might have examined the benefits to the fire insurance companies of paid fire departments, and in view of the benefits received by those companies in these four counties which were not en-

³⁰ *Board v. State*, 155 Ind. 604, 58 N. E. 1037 (1900); *State ex rel. Simpson v. Meeker*, 182 Ind. 240, 105 N. E. 906 (1914). See also, *Adamson v. State*, 9 Ind. 174 (1857), and *Bright v. McCullough*, 27 Ind. 230 (1866).

³¹ *Pittsburgh etc. Ry. Co. v. Backus*, 133 Ind. 625, 33 N. E. 432 (1893), *aff'd* 154 U. S. 421 (1894).

³² *Louisville etc. R. Co. v. State*, 25 Ind. 177 (1865).

³³ *Henderson v. London Ins. Co.*, 135 Ind. 23, 34 N. E. 565 (1893).

joyed by those operating in counties not having such paid fire departments, thus upheld the classification as a reasonable one and not in violation of the uniformity clause.

The requirement of uniformity and equality within the taxing district in which a particular tax is levied, applies only to assessments and taxation, and does not control the expenditure of public money.³⁴ It is also well settled that this clause applies only to property, not to license taxes.³⁵ *A fortiori*, a license tax on all corporations engaged in a certain business, is constitutional.

Under the Indiana Constitution property may be classified by law for the purpose of being assessed for taxation, so long as the rate of assessment for all property is the same after the valuation is fixed. The court in *Clark v. Vandalia R. R. Co.*³⁶ said as to this,

"Our Constitution directs that the General Assembly shall provide by law, for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as will secure a just valuation of all property for taxation purposes. From the great variety of property which should bear the burden of taxation, the diverse character of owners, and multiplicity of uses to which it is put, our legislative body, for more than a half century, has recognized the necessity for different methods for the assessment of different classes of property, to secure a just and uniform valuation. . . . It is plainly evident that it was the legislative intent to differentiate the valuation and appraisal of railroad property for taxation from that of individuals. Section 10 makes it the duty of all persons of full age, of sound mind, and not married women, to list all his property, and specifically requires him to list all moneys in his possession, or on deposit, and all credits due and owing him. Section 32 of the act classes railroads with other public service corporations, such as plank and turnpike roads, telegraph and bridge companies, and requires the proper accounting officers of the company to furnish, under oath, to the auditor of the county where its principal office is situated, a list of the capital stock of the company, its value, and a statement dividing all the capital stock among the several counties through which, or into which, the road runs. The

³⁴ *Kerr v. Perry Township*, 162 Ind. 310, 70 N. E. 246 (1904).

³⁵ *Terre Haute v. Kersey*, 159 Ind. 300, 64 N. E. 649 (1902); s. c. 161 Ind. 471, 68 N. E. 1027 (1902).

³⁶ 172 Ind. 409, 86 N. E. 851 (1909).

details as to railroads are meager, but it is apparent that the effort was to provide a system by which all railroad property of every kind should be valued as a unit, and the valuation distributed equitably along the line for taxation."³⁷

The Supreme Court of the United States has held that a state may, without violating the constitutional provision for equal protection of the laws contained in the Federal Constitution, or the uniformity requirement contained in the State Constitution, select for taxation those engaged in one class of business and exclude others, if all similarly situated are brought within the class and all members of the class are dealt with according to uniform rules.³⁸

The following language in *Baldwin v. State*³⁹ contains a concise statement of the position of the Indiana Supreme Court in regard to the classification of property for purposes of taxation:

"A reasonable classification for purposes of legislation is not prohibited by either the federal or state Constitution. All that is required is that the law operate alike upon all persons similarly situated.

"The classification cannot be arbitrary, but must be reasonable. However, the classification will be upheld unless it is so manifestly inequitable and unjust that it would cause an imposition of a burden on one class to the exclusion of another without reasonable distinction.

"It is primarily for the legislature to determine the classification, and is never a judicial question unless the classification under no circumstances can be viewed as reasonable. When the classification in a law is questioned, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts must be presumed."⁴⁰

The state, then, has the power to tax the property of corporations incorporated in Indiana, or authorized to do business here, as it does the property of individuals; and it has the further right, since a corporation exists by its authority

³⁷ 86 N. E. 852.

³⁸ *Oliver Iron Mining Co. v. Lord*, 262 U. S. 173 (1923), a case coming up from Minnesota, which has a constitutional provision requiring equality and uniformity, substantially similar to the corresponding provision in the Indiana constitution.

³⁹ 194 Ind. 303, 141 N. E. 343 (1924).

⁴⁰ 141 N. E. 234.

and permission, to levy excise taxes on its corporate privileges, these powers to tax being limited only by the constitutional limitations of the State and Federal Constitutions. The limitation of uniformity in the Indiana Constitution requires merely uniformity of assessment and rate of property taxes in the districts subject to the tax, and does not apply to excise taxes. The provision is not violated by classifying property for purposes of assessment, if the tax operates on all members of the class alike and the classification is reasonable and not arbitrary. Uniformity applies only to assessment and collection of the tax and not to the distribution of the proceeds. Local taxes are not prohibited for objects which are in themselves local. Since absolute uniformity is impossible, only lack of uniformity which is produced by favoritism, fraud or intentional misconduct of taxing officials, and not lack of uniformity which occurs through accident or mistake, will make the tax invalid.

PROVISIONS OF THE INDIANA TAXING STATUTES AFFECTING CORPORATIONS FOR PROFIT

The Indiana Constitution grants to the legislature the power to provide for a uniform and equal rate of assessment and taxation of all property, real and personal, except such property used for municipal, educational, literary, scientific, religious or charitable purposes, as may be exempted by law.⁴¹ These exceptions in no way apply to corporations for profit.

No body of statutory law is so constantly changing as that in the field of taxation. As the corporate form of business organization has assumed increasing importance, and the demands for revenue have multiplied, the legislature has frequently provided for special methods of taxation of corporations. In general, corporations are subject to property taxes to the same extent as individuals. In addition to property taxes, gross income taxes and intangible taxes likewise apply to corporations. The legislature has provided for special taxation of some kinds of corporations and has

⁴¹ Article 10, Sec. 1.

prescribed special methods for the listing and assessment of their property.

The basis for tax levies for state, school and various political subdivisions of the state is a poll tax on each adult male citizen and a tax on each \$100.00 worth of property.⁴² A poll tax, of course, does not apply to a corporation.

All property within the jurisdiction of the state not expressly exempted is subject to taxation.⁴³ The power to select the subjects for taxation resides in the legislature, and on it the Indiana Constitution imposes the duty to provide and regulate methods for a just valuation of all property. Thus when the legislature does not prescribe such regulations as to any particular species of property, such property cannot be taxed.⁴⁴ For instance, in the absence of any regulation for the manner of assessing or valuing insurance policies, they cannot be taxed as personal property.⁴⁵ In other words, the provision that all property within the state not exempted is subject to taxation has been construed to mean all property for which the legislature has provided regulations concerning the methods of assessment.

All property is assessed and valued at its true cash value on the first day of March in each year.⁴⁶ If a corporation is not organized until after the time prescribed for the assessing of property, its stock cannot be taxed for the year of its formation, as the assessor cannot be said to have failed or omitted to list that which did not then exist as a subject of taxation.⁴⁷

While, strictly speaking, none of the statutory exemptions apply to corporations for profit, they may take advantage of the \$1,000.00 mortgage deduction which is, in a sense, an exemption. The mortgage exemption law allows any person liable for taxation in Indiana on mortgaged real estate to

⁴² Burns' Ann. Stat., 1933, Sec. 64-101.

⁴³ Burns' Ann. Stat., 1933, Sec. 64-103.

⁴⁴ *Western Union Tel. Co. v. Riley*, 47 Ind. 511 (1874).

⁴⁵ *Board v. Holliday*, 150 Ind. 216, 49 N. E. 14 (1898).

⁴⁶ Burns' Ann. Stat., 1933, Sec. 64-103.

⁴⁷ *King v. Madison*, 17 Ind. 48 (1861). Here, however, the property in question (stock of a state bank) was wholly exempt from municipal taxation.

deduct \$1,000.00 of the mortgage indebtedness from the assessed valuation of the mortgaged premises—provided the deduction does not exceed one-half of the assessed valuation of such real estate—the amount remaining being made the basis for taxation for that year.⁴⁸ A person being defined to include a firm, company, association or corporation in respect to the tax statutes,⁴⁹ it seems clear that corporations are allowed this benefit to the same extent as other taxpayers.⁵⁰ The allowance of this deduction has been held not to be in violation of Section 1, Article 10, of the Indiana Constitution.⁵¹

Corporations, like other taxpayers, are entitled to the benefit of the law fixing the maximum tax rates in townships at \$1.25 and in cities and towns at \$2.00. These maximum rates for property taxes may be exceeded only by permission of the State Board of Tax Commissioners.⁵²

All corporate property, including capital stock and franchises, is assessed to the corporation as to a natural person, the corporation being considered a resident of the place where its principal office is located. However, if a domestic corporation has its home office in one county and carries on its business in another, the corporation in making its report to the State Board of Tax Commissioners must show the assessed values of tangible property owned by it in each county. The corporate excess,⁵³ when determined by the State Board of Tax Commissioners, is certified to each county where business is carried on, the apportionment being based on the ratio of the tangible property in each county to the

⁴⁸ Burns' Ann. Stat., 1933, Sec. 64-209.

⁴⁹ Burns' Ann. Stat., 1933, Sec. 64-526.

⁵⁰ Biennial Report of the Attorney General for the Fiscal Years 1915 and 1916, p. 607.

⁵¹ State ex rel. Lewis v. Smith, 158 Ind. 543, 63 N. E. 25, 64 N. E. 18. See also, 159 Ind. 695, 64 N. E. 1127.

⁵² Acts of 1934, Ch. 119.

⁵³ The corporate excess is really the intangible property of the corporation. To determine it, the value of the tangible property is deducted from the value of the capital stock, the excess being taxed to the corporation. Smith v. Stephens, 173 Ind. 564, 91 N. E. 167. See also, Hyland v. Central etc. Co., 129 Ind. 68, 28 N. E. 308 (1891).

total tangible property in all of said counties. This certified assessment is then apportioned by the county auditor to the several taxing units of his county where property is located, in the same ratio. If a corporation has no principal office in this state, its property is listed and taxed at any place in the state where the corporation transacts business.⁵⁴

Real property of a corporation is assessed where such property is located.⁵⁵ Every franchise granted by any law of this state and owned or used by any person or corporation, and every franchise or privilege used or enjoyed by any person or corporation is assessed as personal property.⁵⁶

The president or accounting officer of a corporation lists, on blanks furnished by the county assessor, all personal property owned by the corporation on the first day of March and what he considers the true cash value of each item listed. After examination of the taxpayer's statement, the assessor determines the value. For this purpose he may examine under oath the person making the list or any other person, and he may consider the market or usual selling price, or earning capacity of such property.⁵⁷ The corporate officer listing the personal property of the corporation is required to answer under oath certain interrogatories,⁵⁸ as for example whether or not any property has been temporarily converted into non-taxable property for the purpose of evading taxation.⁵⁹

If the assessor believes that property has been converted to evade taxation, he is empowered to assess such property at its true cash value. A corporation or person is subject to a fine of not less than \$50.00 nor more than \$5,000.00 if a false or fraudulent list of personal property is given, or if he refuses to furnish the assessor with a list, or temporarily

⁵⁴ Burns' Ann. Stat., 1933, Sec. 64-405.

⁵⁵ Burns' Ann. Stat., 1933, Sec. 64-501.

⁵⁶ Burns' Ann. Stat., 1933, Sec. 64-505.

⁵⁷ Burns' Ann. Stat., 1933, Sec. 64-601.

⁵⁸ Burns' Ann. Stat., 1933, Sec. 64-602.

⁵⁹ Also, whether the corporation has paid a gross income tax during the preceding year. See Acts of 1937, Ch. 117.

converts property to evade taxation.⁶⁰ In the event the corporation or person refuses to furnish the assessor with a list of its personal property, the assessor is empowered to make the list from the best information he can obtain. This fact is noted on the assessor's record and fifty per cent is added to the valuation by the auditor.⁶¹

The assessment of property owned by corporations as well as that of other taxpayers is made in most instances by the township assessor.⁶² Personal property is assessed annually; but real property only once in four years except as otherwise ordered by the State Board of Tax Commissioners.⁶³ The list of personal property assessments (referred to as the "tax duplicates") are delivered to the county auditor.

The tax duplicates are turned over to the respective county assessors by the auditors.⁶⁴ The county assessors check the tax duplicates, and lists any omitted property discovered by him. The tax duplicates as changed and supplemented by the respective county assessors are then returned to the county auditors. Each county assessor has general supervision over the township assessors in his county.

The next step in the assessing process for most sorts of property whether owned by corporations or individuals is the action of the County Board of Review, which includes three persons holding county offices, and also two freeholders appointed by the judge of the circuit court. This board meets on the first Monday in June annually, to assess, review and equalize taxes. It has power to hear complaints of any owner of personal property except property originally assessed by the State Board of Tax Commissioners, to equalize the valuation of property and taxables made subsequent to the preceding first of March, and to correct any list of valuations as it deems proper. It also has power to equalize the assessor's valuation either by adding or deduct-

⁶⁰ Burns' Ann. Stat., 1933, Sec. 64-608.

⁶¹ Burns' Ann. Stat., 1933, Sec. 64-610.

⁶² See Burns' Ann. Stat., 1933, Secs. 64-1001 to 64-1031.

⁶³ See Acts of 1935, Ch. 163, and Acts of 1937, Ch. 19.

⁶⁴ See Burns' Ann. Stat., 1933, Secs. 64-1101 to 64-1103.

ing sums necessary to fix the assessment at the true cash value, and to add omitted property. It may correct all errors in names, in description of property, and in assessment and valuation. It passes upon each valuation.⁶⁵

In counties over 200,000 in population (Marion County) the judge of the circuit court appoints the two freeholders on or before the first day of March, and these two members, under the advice and direction of the *ex officio* members, list the domestic corporations of the county and investigate their financial condition. For this purpose they may require statements from such corporations, may summon the officers or other persons by subpoena issued by the auditor to testify in relation to the property and financial condition of the corporation. The board considers all this information at its next annual meeting.⁶⁶

It is the duty of the County Board of Review to inquire into the valuation of the various classes of property in the respective townships and divisions of the county and to make such changes by raising or lowering such valuations as necessary to equalize the same for all divisions and to determine the rate per cent to be added or deducted to equalize the rate in the various taxing units. The board may reduce or increase the valuation of a particular tract, but cannot reduce the aggregate valuation of all townships below the true cash value nor increase the same beyond the amount necessary to equalize the valuation. If the board finds the aggregate assessment too high or too low, so that it is impracticable to equalize it, it may set aside the assessment of the county or of any taxing unit therein *in toto* and order a new assessment with instructions to assessors to increase or diminish the aggregate assessment of their respective townships in such amount as the board deems just and consistent with law.⁶⁷

The next step is to adjust the rate of tax in the different municipalities and other taxing units of each county. This is the function of the County Board of Tax Adjustment.

⁶⁵ Burns' Ann. Stat., 1933, Sec. 64-1201.

⁶⁶ Burns' Ann. Stat., 1933, Sec. 64-1202.

⁶⁷ Burns' Ann. Stat., 1933, Sec. 64-1205.

The county auditor lays before this board the budgets adopted and tax levies fixed by the proper officers of the various municipal corporations, which include counties, townships, school townships, cities, school cities, towns, school towns, school districts, sanitary districts, park districts, and all taxing units.⁶⁸ The duty of this board is to examine, and if it deems such action necessary, to revise, change, or reduce, but not increase, any tax levy and any corresponding items of the budgets on which tax levies are based, and apportion the total of all of said levies so that the total levy on all property within any municipal corporation shall not exceed the applicable total rate. The board cannot reduce specific tax levies made by local officers for the purpose of paying obligations incurred prior to its creation or for the purpose of paying judgments rendered against the taxing units. Except for this, the tax rate in any unit cannot exceed the maximum already stated except on a specific finding of an emergency by the State Board of Tax Commissioners, if an appeal is properly taken to that body.⁶⁹

The county auditor computes all tax rates as finally determined.⁷⁰ He has power to assess omitted property, the same as assessors, and may be compelled by mandamus proceedings if he refuses to assess omitted property discovered by him or brought to his attention.⁷¹ He makes out the final tax duplicates and extends thereon in one column all taxes due for the current year for state, county, school, township, road and all other taxes and poll taxes, and in separate columns all delinquent taxes.⁷²

The county auditor delivers the tax duplicates to the county treasurer on or before the first day of December.⁷³

The State Board of Tax Commissioners is composed of three members appointed by the governor for a term of four

⁶⁸ Burns' Ann. Stat., 1933, Sec. 64-302.

⁶⁹ Acts of 1937, Ch. 119.

⁷⁰ Burns' Ann. Stat., 1933, Sec. 64-1401.

⁷¹ Burns' Ann. Stat., 1933, Sec. 64-1402.

⁷² Burns' Ann. Stat., 1933, Sec. 64-1404.

⁷³ Burns' Ann. Stat., 1933, Sec. 64-1408.

years, not more than two of whom belong to the same political party.⁷⁴

In cases where by law the Board makes original assessments, it is given the same powers given to county boards of review. It is to appraise and assess all property coming before it for assessment, directly or indirectly, at its true cash value, according to its best knowledge and judgment. The sheriffs of the various counties are required to execute its orders and to serve its process.⁷⁵

The State Board also has the power and is required to prescribe, promulgate and change when necessary all forms of books, schedules, blanks, notices, and all other papers necessary under our taxing system; to construe tax and revenue laws and instruct taxing officers as to their duties when requested or when it deems it necessary; and in general to see that all property taxation throughout the state is administered properly and in accordance with law.⁷⁶

The State Board of Tax Commissioners has authority to equalize assessments of all real and personal property of the various counties upon appeal either by taxpayers or by the officers of taxing units. It now has the sole power to declare an emergency in any taxing unit, which permits a tax rate in excess of the maximum otherwise provided by law.⁷⁷ And it may equalize assessments throughout the various counties so as to make valuations uniform throughout the state, so far as practicable.⁷⁸

In equalizing the valuation of property in the different counties, the Board considers separately all property originally assessed by it, lands and lots and improvements outside the corporate limits of cities and towns, lands, town and city lots and improvements within the corporate limits of cities and towns, and personal property of any subdivision of any

⁷⁴ Burns' Ann. Stat., 1933, Sec. 64-1301.

⁷⁵ Burns' Ann. Stat., 1933, Sec. 64-1303.

⁷⁶ See Burns' Ann. Stat., 1933, Sec. 64-1309.

⁷⁷ Acts of 1937, Ch. 119. Previously the County Board of Tax Adjustment had power to declare such an emergency, though always subject to the review of the State Board.

⁷⁸ Burns' Ann. Stat., 1933, Sec. 64-1317.

of said classes, and upon such consideration determines such rates of addition to or deduction from the listed or assessed valuation of each of said classes of property in each county or any taxing unit or part thereof, or to or from the aggregate assessed value of each of said classes in the state as the board thinks equitable and just to all property throughout the entire state.⁷⁹

The State Board of Tax Commissioners assesses all railroad property at its true cash value and certifies its assessment to the proper county auditor who in turn distributes the value to the various subdivisions of the county and computes and extends the tax on the tax duplicate.⁸⁰

In the event a municipal corporation, through its proper legal officers, determines to issue bonds or other evidences of indebtedness and gives public notice to that effect, any ten taxpayers affected may appeal to the State Board of Tax Commissioners, and the decision of the State Board is final.⁸¹

As soon as the county treasurer receives the tax duplicates, as finally corrected, he publishes notice of that fact.⁸² Taxes attach as a lien on all property on March first each year, although they are not due and payable until the following year, and the lien is not destroyed or affected by sale or transfer of the property.⁸³

Taxes are due and payable in two equal installments, the first being due on or before the first Monday in May and the second on or before the first Monday in November. A penalty of three per cent. is added and interest at the rate of eight per cent. is charged on delinquent taxes.⁸⁴ After the taxes have been delinquent for fifteen months, the real estate may be sold.⁸⁵ Property sold for delinquent taxes may be re-

⁷⁹ Acts of 1935, Ch. 306.

⁸⁰ Burns' Ann. Stat., 1933, Sec. 64-1326.

⁸¹ Burns' Ann. Stat., 1933, Sec. 64-1332.

⁸² Burns' Ann. Stat., 1933, Sec. 64-1501.

⁸³ Burns' Ann. Stat., 1933, Sec. 64-2001.

⁸⁴ Burns' Ann. Stat., 1933, Sec. 64-1508.

⁸⁵ Burns' Ann. Stat., 1933, Sec. 64-1509. But cf. Acts of 1937, Ch. 2.

deemed any time within two years on payment of the penalties prescribed by law.⁸⁶

Taxes are collected from corporations in the same manner as they are collected from individuals, and corporations may be proceeded against and are subject to the same penalties as individuals.⁸⁷ If the treasurer is unable to collect a tax assessed against a corporation, he returns the same to the county auditor, who certifies the same with the delinquent taxes to the State Board of Tax Commissioners.⁸⁸

If a corporation does not have personal property or real estate out of which such delinquent taxes can be collected, the State Board of Tax Commissioners may cause a bill to be filed against it for the discovery and sequestration of its property.⁸⁹

CORPORATIONS AND OTHER SPECIFIC BUSINESSES WHICH ARE SPECIALLY TAXED

The Indiana legislature, in addition to the general taxing provisions for all individuals and corporations, has provided for special methods of taxing some kinds of businesses, whether incorporated or unincorporated. Under the operation of these statutes these kinds of businesses are assessed and taxed by the local taxing units on real estate, structures, machinery and appliances, and in addition are subject to assessment on their business as a whole by the State Board of Tax Commissioners in the manner provided by these statutes. In other words, these provisions are supplemental only and are construed with the general taxing statutes. Included in these are joint stock land banks,⁹⁰ foreign insurance companies,⁹¹ financial institutions,⁹² industrial loan and invest-

⁸⁶ Burns' Ann. Stat., 1933, Sec. 64-2301.

⁸⁷ Burns' Ann. Stat. 1933, Sec. 64-1801.

⁸⁸ Burns' Ann. Stat., 1933, Sec. 64-1802.

⁸⁹ Burns' Ann. Stat., 1933, Sec. 64-1803.

⁹⁰ Burns' Ann. Stat., 1933, Sec. 64-701.

⁹¹ Burns' Ann. Stat., 1933, Sec. 64-702; Acts of 1935, Ch. 162, Sec. 235.

⁹² Burns' Ann. Stat., 1933, Secs. 801 ff.

ment companies,⁹³ and various other sorts of corporations to be hereafter discussed in more detail. These corporations are required to file annually between the first day of March and the first day of April⁹⁴ a verified statement by some officer or agent giving the information required by the statute applicable to their particular kind of business. From these statements, and from any other source available, the State Board of Tax Commissioners ascertains the true cash value of the entire property of such business by taking the aggregate actual value of all the shares of capital stock, or if there are no shares of stock, the actual value of the capital plus any mortgage encumbrances and less the assessed value of any real estate outside the state not specifically used in the business, and less also the assessed value of all property, real and personal, which is taxed locally within the state.⁹⁵

Telegraph Companies. Every joint stock association, company, copartnership or corporation, whether domestic or foreign, engaged in transmitting messages to, from, through, or across Indiana, is required to file annually a verified statement by one of its officers showing for the preceding year:

1. The total capital stock.
2. The number of shares of capital stock issued and outstanding, and the par or face value of each share.
3. Its principal place of business.
4. The market value of said shares of stock on the first day of March next preceding, and if such shares have no market value, then the actual value.
5. The dividends which have been paid during the year last preceding the making of said report on said stock; the amount of surplus or reserve funds of such company and its net income from its telegraphic business during the year last preceding the filing of said report.
6. The real estate, structures, machinery, fixtures and appliances owned by such company and subject to local taxation within the state, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

⁹³ Acts of 1935, Ch. 181, Sec. 21a.

⁹⁴ Burns' Ann. Stat., 1933, Sec. 64-721.

⁹⁵ Burns' Ann. Stat., 1933, Sec. 64-709.

7. The specific real estate, together with the permanent improvements thereon, owned by such company situated outside the state and not directly used in the conduct of the business with a specific description of each such piece, where located, the purpose for which it is used and the sum at which the same is assessed for taxation in the locality where situated.

8. All mortgages upon the whole or any of its property, together with the dates and amounts thereof.

9. (a) The total length of its lines.

(b) The total length of its lines outside the state.

(c) The length of its lines within each county and township within the state.

(d) Any other information that the State Board of Tax Commissioners may require to aid in determining valuation.

(e) The total value of all its property used or useful for rate-making purposes.⁹⁶

In the case of telegraph and telephone companies, the State Board of Tax Commissioners ascertains and assesses the true cash value of such business by taking the proportion of the whole aggregate value, determined as explained above, which the length of lines of said business within the state bears to the total length of lines. From the entire value of the property in the state so ascertained, there is deducted the assessed value for taxation of all real estate, structures, machinery and appliances within the state subject to local taxation, and the residue of such value is assessed to such company.⁹⁷

The taxing law of 1893 relating to telegraph companies, which contained similar provisions, was upheld by the Indiana Supreme Court and by the United States Supreme Court.⁹⁸

Telephone Companies. Every telephone company doing business in this state, whether domestic or foreign, is required to file annually by its officers a verified statement showing for the preceding year, the same information which is re-

⁹⁶ Burns' Ann. Stat., 1933, Sec. 64-703.

⁹⁷ Burns' Ann. Stat., 1933, Sec. 64-709.

⁹⁸ *Western Union Tel. Co. v. Taggart*, 141 Ind. 281, 40 N. E. 1051 (1895); affirmed, 163 U. S. 1 (1896).

quired from telegraph companies, except that the value of property used for rate-making purposes is not required.⁹⁹

Express Companies. Every express company incorporated or acting under the laws of this or any other state or foreign nation engaged in conveying to, from, through, in, or across this state or any part thereof, any other articles, under contract, express or implied, with any railroad company—provided the company itself is not a railroad company—is required to file by one of its officers a verified statement showing for the preceding year, the same information which is required from telephone companies, except that the statute makes provision for the situation of an express company which has not issued shares of capital stock.¹⁰⁰

The State Board of Tax Commissioners ascertains and assesses the true cash value of the property of express companies by taking the proportion of the whole aggregate value of such companies which the length of lines or routes within the state bears to the whole length of lines or routes of such companies. Then, as in the case of telephone and telegraph companies, the assessed value of all real estate, structures, machinery and appliances within the state subject to local taxation, as well as the real estate outside the state not used in the business, is deducted from the true cash value as determined by the board, and the company is assessed on the residue.¹⁰¹

The Adams Express Company objected to this method of taxing its property as a unit, contending that property outside the state was being taxed. But the court sustained the statutory method of apportioning the property within and without the state, holding quite correctly that the organic connection with the property outside the state made the Indiana property more valuable. Such out-of-state property

⁹⁹ Burns' Ann. Stat., 1933, Sec. 64-704. For the method of computing the value of the corporate excess, see the discussion *supra*, under telegraph companies.

¹⁰⁰ Burns' Ann. Stat., 1933, Sec. 64-705.

¹⁰¹ Burns' Ann. Stat., 1933, Sec. 64-709.

could therefore be taken into consideration in computing the value of the Indiana property.¹⁰²

The court continues its argument with some rather naive language to the effect that this and other taxpayers should be willing and even glad to pay this tax as a quite inadequate compensation for the protection which the state actively renders to their property and activities. The Adams Express Company is assured that:

"The law, with sword and buckler, goes with their agents in their perilous journeyings throughout the state by day like a pillar of cloud and by night like a pillar of fire to guard the valuable treasures and precious freight they transport for hire from burglars and robbers."¹⁰³

Whether or not such rationale can ease the reluctance with which the taxpayer parts with a substantial portion of his profits as taxes, certain it is that the exaction must stay within certain limits. The State Board of Tax Commissioners was rebuffed by the federal Supreme Court for a too greedy assessment of the value of the property of an express company in the case of *Fargo v. Hart*.¹⁰⁴ Here the Board had taken into consideration, in valuing the Indiana property, not only property outside the state used in the express business, but also investments of the company held in New York. The court decided that the latter property could not be considered, as it had no organic connection with the Indiana property, and therefore did not affect the taxable value of such property in Indiana.

Sleeping-Car Companies. Every joint stock association, company, copartnership or association, foreign or domestic, and conveying to, from, through, in, or across this state or any part thereof, passengers or travelers in parlor-cars, palace-cars, drawing-room cars, sleeping-cars, dining-cars or chair-cars, under any contract, express or implied, with any railroad company, is required to file a verified statement by

¹⁰² State v. Adams Express Co., 144 Ind. 549, 42 N. E. 483 (1895).

¹⁰³ 42 N. E. 486.

¹⁰⁴ 193 U. S. 490 (1904).

one of its officers showing substantially the same information as is required of telephone companies.¹⁰⁵

In the case of such companies, the State Board of Tax Commissioners ascertains and assesses the true cash value of the property of such company in substantially the same manner as in the case of express companies.¹⁰⁶

Pipe-Line Companies. Every joint stock association, company, copartnership or association, domestic or foreign, which owns a pipe-line or lines, wholly or in part, situated in this state, used for the transmission of oil, natural or artificial gas, or steam for heat or power, or for the transmission of power, or for the transmission of articles by pneumatic power or other power, is required to make out a verified statement by one of its officers or agents showing for the preceding year, substantially the same information required from telephone companies, except that certain more detailed information as to property is required.¹⁰⁷

In the case of pipe-line companies, the State Board of Tax Commissioners ascertains and assesses the true cash value of the property of such company in substantially the same manner as in the case of express companies. The Board distributes and apportions to the different taxing units the residue in the proportion that the length, size and value of the lines in each unit bears to the total assessed value in the state.¹⁰⁸

Public Utilities. Every corporation, company, individual, association of individuals, their lessees, trustees or receivers, that own, operate, manage or control any plant or equipment within the State of Indiana for the production, transmission, delivery of furnishing of heat, light, water or power, or for the furnishing of elevator or warehouse service, either directly or indirectly, to or for the public, is required to make out a statement, verified by an officer or agent, showing for the preceding year:

¹⁰⁵ Burns' Ann. Stat., 1933, Sec. 64-706.

¹⁰⁶ Burns' Ann. Stat., 1933, Sec. 64-709.

¹⁰⁷ Burns' Ann. Stat., 1933, Sec. 64-707.

¹⁰⁸ Burns' Ann. Stat., 1933, Sec. 64-709.

1. The name and location of such public utility.
2. The names and post-office addresses of its officers and the name and address of the officer, agent or employee in charge of the operation of its business.
3. The amount of the capital stock, both common and preferred, authorized; and the amount of the same outstanding, together with the number of shares into which such capital stock is divided if such public utility is a corporation. If such public utility is not organized as a corporation, then the amount of the actual investment in such public utility.
4. The true cash value of such capital stock or investment.
5. The real estate, structures, machinery, fixtures and appliances owned by such public utility subject to local taxation within the state, and the location and assessed value in each county, township, town and city where the same is assessed.
6. The specific real estate, together with the permanent improvements thereon, owned by such public utility situated outside the State of Indiana, with specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where located.
7. A schedule of all property owned by such public utility, other than real estate, located outside the state, its location, and the assessed value for taxation in the locality where situated.
8. The name and value of each franchise or privilege owned or enjoyed by such public utility.
9. A schedule of all other property not included in the foregoing, both tangible and intangible, within the state, and where situated, together with a statement of the true cash value of the same.
10. The total amount of all indebtedness, together with a description of the same, giving names and residences of the holders of such indebtedness.
11. The true cash value of all tangible property.
12. The dividends which have been paid during the year last preceding the making of such report.
13. The amount of the surplus, undivided profits and all reserve funds of such public utility as of the first day of March of the current year.
14. The amount of the gross and net income from its business during the year last preceding the filing of such report, together with a copy of its balance sheet or statement as of March first of the current year.¹⁰⁹

All the taxable property of any public utility is assessed at

¹⁰⁹ Burns' Ann. Stat., 1933, Sec. 64-708.

not less than its true cash value as of the first day of March of each year. The latest valuation placed upon such taxable property for rate-making purposes by the Public Service Commission on or before the first day of March is the *prima facie* true cash value of such property for that year.¹¹⁰ From this true cash value the State Board of Tax Commissioners deducts the assessed value of real estate in the various taxing units in the state, and the assessed value of real estate outside the state not specifically used in the business, and distributes the residue in the proportion that the assessed value of the tangible property in each taxing unit bears to the total assessed value.¹¹¹

Tank, Refrigerator, and Freight-Car Companies. Every person or association of persons, joint stock association, co-partnership, company or association, domestic or foreign, who owns or controls cars and engages in shipping or conveying to, from, through, in, or across the state, or any part of it, any kind of freight or property whatever, under any contract, express or implied, with any railroad company, or whose business, wholly or in part, is furnishing, loaning or leasing any kind of railroad cars (except parlor, drawing-room, combination, dining, chair, or sleeping-cars), or in whom the legal title to any such cars is vested, but which are operated, loaned, leased, or hired to be operated on any railroad in this state, is denominated a car equipment company, and is required annually to file a verified statement by some officer or agent showing for the preceding year:

1. The name of the person, firm, company, or association.
2. The nature of the business engaged in.
3. The name of the state or states where organized.
4. Principal place of business.
5. Names and addresses of president, secretary, treasurer, and superintendent or general manager.
6. Location of principal office in Indiana.
7. Name and address of chief officer or agent in Indiana.

¹¹⁰ Burns' Ann. Stat., 1933, Sec. 64-710.

¹¹¹ Burns' Ann. Stat., 1933, Sec. 64-709.

8. Number of cars within or passing into or through the state with description and value thereof.

9. Number of miles run by such cars in Indiana and gross and net earnings from the operation thereof.

10. Total number of miles run by such cars in Indiana and elsewhere and total gross and net earnings from the operation thereof.

11. Total number of cars owned or controlled and the description and value thereof.

12. Total miles made by all cars owned or controlled and gross and net earnings from the operation thereof.

13. Total miles made in Indiana by all cars owned or controlled and gross and net earnings from the operation thereof.

14. Such other and additional information as may be deemed necessary by the State Board of Tax Commissioners to the proper valuation and assessment of the property of such company in this state in accordance with the provisions of the act applicable to equipment car companies and to the performance of the duties thereby imposed.¹¹²

After the filing of this statement the State Board of Tax Commissioners values and assesses the rolling-stock and car equipment of such company owned or controlled and used and employed in Indiana, by finding the average number of cars within the state during the year and the cash value thereof. The average number of cars is found by taking such proportion of the total number of cars so operated as the mileage and earnings made by said cars within the State of Indiana bears to the aggregate mileage and earnings made by said cars, within the State of Indiana and elsewhere.¹¹³ Upon this valuation there is levied a tax of two per cent. of the amount so fixed as the valuation and assessment, and the board computes the amount and certifies it to the Auditor of State for collection.¹¹⁴

Railroads. The State Board of Tax Commissioners assesses at its true cash value all railroad track and rolling stock.¹¹⁵ This includes every kind of street railroad, suburban

¹¹² Burns' Ann. Stat., 1933, Sec. 64-713.

¹¹³ The constitutionality of this method of apportionment is perhaps rendered somewhat doubtful by the decision of the federal Supreme Court in *Union Tank Line Co. v. Wright*, 249 U. S. 275 (1918).

¹¹⁴ Burns' Ann. Stat., 1933, Sec. 64-713.

¹¹⁵ Burns' Ann. Stat., 1933, Sec. 64-1326.

railroad or interurban railroad company which maintains lines either at, above, or below the surface, and by whatever power its vehicles are transported.¹¹⁶ The rolling stock is listed and assessed in the various taxing units of the state in the proportion that the length of track in each unit bears to the entire length of track in the state.¹¹⁷

Each railroad company is required to file, with the various county auditors of counties in which the road is operated, a verified statement by the owner, or if a corporation by the president and secretary, showing the property held for right of way, and the length of the main and all side and second tracks and turnouts in each county, and each taxing subdivision thereof, stating the value of improvements and stations located on the right of way. Any change or addition in the right of way since the preceding report must be noted on the annual report.¹¹⁸

The State Board of Tax Commissioners examines the report of the railroad company showing its track, rolling stock, etc., and the other statements required to be filed by the railroad company.¹¹⁹ After determining the total true cash value of the road, less all property specifically taxed, the State Board of Tax Commissioners determines the value per mile by dividing such total value by the number of miles of track within the state.¹²⁰ To determine the value apportionable to each county, the value per mile is multiplied by the miles of track within such county, and this amount is certified to the proper county auditor.¹²¹

All personal property of railroad companies, except that specifically taxed, is required to be listed and assessed in the county and subdivision thereof where it is located on the first day of March of each year.¹²² Real estate held by a railroad which is not included in "railroad track" together with any

¹¹⁶ Burns' Ann. Stat., 1933, Sec. 64-740.

¹¹⁷ Burns' Ann. Stat., 1933, Sec. 64-731.

¹¹⁸ Burns' Ann. Stat., 1933, Sec. 64-723.

¹¹⁹ Burns' Ann. Stat., 1933, Sec. 64-715.

¹²⁰ Burns' Ann. Stat., 1933, Sec. 64-716.

¹²¹ Burns' Ann. Stat., 1933, Sec. 64-717.

¹²² Burns' Ann. Stat., 1933, Sec. 64-732.

improvements thereon, is listed and assessed as real estate in the taxing unit where it is situated.¹²³ Reports of these items are required to be filed annually with the county auditors.¹²⁴

At the same time that the lists and schedules are required to be returned to the county auditor, every railroad is also required to file with the State Board of Tax Commissioners, a sworn statement:

1. Of the property denominated "railroad track," giving the length of the main and side or second tracks and turnouts, and showing the proportions in each county and township, and the total in the state.

2. The rolling-stock, whether owned or hired, giving the length of the main track in each county, and the entire length of the road in this state.

3. Showing the number of ties in track per mile, the weight of iron or steel per yard used in the main and side-tracks, what joints or chairs are used in the track, the ballasting or road, whether graveled, stone or dirt, the number and quality of buildings or other structures on "railroad tracks," the length of time iron or steel in track has been used, and the length of time the road has been built.

4. A statement or schedule showing:

1. The amount of capital stock authorized and the number of shares into which such capital stock is divided.

2. The amount of capital stock paid up.

3. The market value, or if no market value, then the actual value of the shares of stock.

4. The total amounts of all indebtedness, except for current expenses for operating the road.

5. The total listed valuation of all its tangible property in this state.

6. Any other information that the State Board of Tax Commissioners may require to aid in determining valuation.¹²⁵

Bridge and Ferry Companies. Every bridge and ferry company not organized under the laws of this state and doing business here is required to report to the proper assessor of the county where such business is done a statement under oath of the gross amount of all moneys received. Such list

¹²³ Burns' Ann. Stat., 1933, Sec. 64-733.

¹²⁴ Burns' Ann. Stat., 1933, Sec. 64-734.

¹²⁵ Burns' Ann. Stat., 1933, Sec. 64-736.

must also contain a list of the tangible property of such company within the county and its true cash value. The true cash value of the tangible property, and the amount of gross receipts are entered on the tax duplicate and the company is taxable thereon.¹²⁶ There seems to be considerable ground for attacking this statute as unconstitutional, as it is levying a tax on gross receipts as a property tax and seems clearly to be in violation of the uniformity clause contained in the Indiana Constitution, Article 10, Section 1. To make a separate classification for bridge and ferry companies and to levy a property tax on the gross receipts from their business, when no such tax is levied on other businesses seems arbitrary, unreasonable, and discriminatory.¹²⁷

Corporation Reports to County Assessor. Every manufacturing, mining, gravel road, plank road, savings bank, insurance and other associations incorporated under the laws of Indiana (other than those specifically designated) shall, by its president or other proper accounting officer, file annually with the county assessor a sworn statement in duplicate of the amount of its capital stock setting forth in particular:

1. The name and location of the company.
2. The amount of capital stock authorized, and the number of shares into which such capital stock is divided.
3. The amount of capital stock paid-up.
4. The market value, or if no market value, then the true cash value of the shares of stock.
5. The total amount of indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.
6. The value of all tangible property.
7. The difference in value between all tangible property and the capital stock.
8. The name and value of each franchise or privilege owned or enjoyed by such company.
9. The amount of the surplus or reserve fund of such company

¹²⁶ Burns' Ann. Stat., 1933, Sec. 64-720.

¹²⁷ See *Miles v. Department of Treasury*, 193 N. E. 855 (1935), on rehearing 199 N. E. 372 (1935), in which the Gross Income tax was sustained, but as an excise, not a property tax.

and any other information required by the State Board of Tax Commissioners to aid in determining valuation.¹²⁸

One copy of the statement is submitted by the auditor to the county board of review and the other is submitted to the State Board of Tax Commissioners. The county board of review values and assesses the capital stock and all franchises and privileges of such companies. However, if the capital stock is invested in tangible property which is returnable for taxation, it is not assessed to the extent that it is so invested, but is taxable only on the amount by which the value of the capital stock exceeds the assessment of the tangible property. If no tangible property is returned for taxation, the capital stock is assessable at its true cash value.¹²⁹

Tonnage Tax. Navigation companies are required to pay annually before the first day of July into the state treasury a sum equal to three cents per net ton of registered tonnage on all vessels owned by such company.¹³⁰

This payment is in lieu of all other taxes except personal property taxes.¹³¹ Annual reports giving details necessary for the computation of this tax are required.¹³²

In view of the express provision in the United States Constitution in Article 1, Section 10, that "no state shall, without the consent of Congress, lay any duty of tonnage," there seems to be no way to sustain these statutory provisions for tonnage taxes.

Intangibles Tax. The Intangibles Tax Act passed in 1933 provides for an excise tax on certain privileges in connection with intangible property in lieu of all other taxes except inheritance or estate taxes and gross income taxes. The capital stock of a corporation is exempt to the extent that an intangibles tax has been paid on intangibles in which such

¹²⁸ Burns' Ann. Stat., 1933, Sec. 64-723.

¹²⁹ Burns' Ann. Stat., 1933, Sec. 64-724.

¹³⁰ Burns' Ann. Stat., 1933, Sec. 64-741.

¹³¹ Burns' Ann. Stat., 1933, Sec. 64-742.

¹³² Burns' Ann. Stat., 1933, Secs. 64-744 and 64-745.

capital stock is invested.¹³³ Inasmuch as a person is, under the Intangibles Act, defined to include a fiduciary and a firm, partnership, company, association, corporation and/or any and every multiple group that has capacity to own or hold property or the custody thereof,¹³⁴ a corporation is required to pay this tax. The tax includes all kinds of debts, and contracts for the payment of money and securities therefore, and also the stock of foreign corporations,¹³⁵ but with certain specific exemptions.¹³⁶

The rate of tax is five cents per annum on each twenty dollars of the actual value or fractional part thereof of each intangible.¹³⁷ The tax is paid by attaching the required stamps to the intangibles annually during their life.¹³⁸ If the intangible cannot be stamped, the owner is required to file a sworn written report with a description of such intangible with the State Board of Tax Commissioners within ten days after the end of each year and pay the tax as determined by that board.¹³⁹

The Indiana Supreme Court upheld the Intangible Tax Act by a three-two decision in the case of *Lutz v. Arnold*,¹⁴⁰ in which there are two opinions. The first, by Judge Hughes, determined that the tax was a tax on the privileges set forth in the act and not a property tax, and was therefore an excise tax. Having determined that the tax was an excise or privilege tax, the court then held that as such it was not in violation of the provision in Article 10, Section 1, of the Indiana Constitution, requiring uniformity, because that provision applies only to property taxes. When the case came up on a petition for rehearing, the petition was denied, and Judge Treanor submitted his separate opinion in which he concurred with the opinion of Judge Hughes. He assumed

¹³³ Burns' Ann. Stat., 1933, Sec. 64-931.

¹³⁴ Burns' Ann. Stat., 1933, Sec. 64-901 d.

¹³⁵ Burns' Ann. Stat., 1933, Sec. 64-901 a.

¹³⁶ Burns' Ann. Stat., 1933, Sec. 64-901 b.

¹³⁷ Burns' Ann. Stat., 1933, Sec. 64-903.

¹³⁸ Burns' Ann. Stat., 1933, Sec. 64-908.

¹³⁹ Burns' Ann. Stat., 1933, Sec. 64-913. Cf. also, Sec. 64-914.

¹⁴⁰ 208 Ind. 480, 193 N. E. 840, 196 N. E. 702 (1935).

without argument that the tax is an excise tax, and attempted to show that it could be sustained even as a property tax. The dissenting judges concluded that the tax was a property tax on the intangibles included within the scope of the act and not on the privileges set forth by the act, and therefore since the clear purpose of the act was to tax intangible property at a lower rate than tangible property, the law is in violation of the provision for uniformity contained in Article 10, Section 1, of the Indiana Constitution.

As a matter of logic and constitutional law, it seems that the minority opinion is sound, and that the pyramid of reasoning of the majority, as set forth in both opinions, is built on the false theory that the tax is actually what the statute purports to make it, a tax on various privileges connected with the property, rather than on a determination of the fair import of the meaning of the statute as a whole, which clearly shows it to be a tax on the property itself. It is to be noted that the Attorney General¹⁴¹ has held that the intangibles tax does not include within its scope the execution of an intangible by a resident of Indiana payable to a non-resident, which, in effect, means that the tax for all purposes except avoiding the operation of the uniformity clause in the Indiana Constitution, is considered a property tax, and certain it is that it is the property involved that bears the burden. This ruling has recently been sustained, on very similar reasoning, by the Indiana Supreme Court.¹⁴²

*Gross Income Tax.*¹⁴³ A tax on the gross income of every individual, firm, joint venture, association, corporation, or other business unit is imposed. Gross income is defined as the gross receipts of the taxpayer received from all sources. There are, however, certain exclusions from taxable gross

¹⁴¹ Biennial Report of the Attorney General for the Fiscal Years 1933 and 1934, p. 421.

¹⁴² *Zoercher v. Indiana Assoc. Telephone Corp.*, 7 N. E. (2d) 282 (1937). See esp. the concurring opinion of Judge Fansler, who dissented in *Lutz v. Arnold*, *supra*.

¹⁴³ See generally, Acts of 1937, Ch. 117, amending Acts of 1933, Ch. 50 (Burns' Ann. Stat., 1933, Sec. 64-2601 to 64-2629). The amending act came into effect April 1, 1937.

income such as cash discounts and "returns" on sales, the return of borrowed money, receipts of capital by a corporation or other business unit, property received in certain reciprocal exchanges, and gross receipts from businesses regularly carried on outside Indiana.¹⁴⁴

The rates of tax are one-fourth of one per cent. upon gross incomes derived from wholesale sales (except by public utilities) or from advertising, and one per cent. upon gross incomes derived from retail sales, personal service, and all other sources.¹⁴⁵

Each taxpayer is entitled to a \$1,000 exemption in each year; but any taxpayer engaged in the retail business is entitled to an exemption of \$3,000, provided he receives that much gross income from the retail business. No taxpayer is under any circumstances entitled to a yearly exemption of more than \$3,000.¹⁴⁶

There are certain exemptions from taxation of gross income, including some required by the Federal Constitution (interstate commerce and federal instrumentalities), others given as a matter of public policy (certain receipts from insurance and pensions, gross income of religious, charitable, educational and similar institutions, and labor unions), and certain others given to avoid duplication of taxes (athletic receipts and amounts received by insurance companies subject to premium tax).¹⁴⁷

Each taxpayer is required to file quarterly returns showing the amount received for the preceding quarter, unless his tax for any one quarter does not exceed ten dollars, in which case he may file merely an annual return within thirty days after the end of the year. The quarterly returns are filed on or before the 15th day of April, July and October, and every taxpayer is required to file an annual return on or before the 31st of January of the following year showing the entire

¹⁴⁴ Acts of 1937, Ch. 117, Sec. 1 (m). See also, Sec. 1 (n) to (q) inclusive, restricting the taxability of gross income of financial institutions and insurance companies.

¹⁴⁵ Acts of 1937, Ch. 117, Sec. 3.

¹⁴⁶ Acts of 1937, Ch. 117, Sec. 5.

¹⁴⁷ Acts of 1937, Ch. 117, Sec. 6.

income for the year, deducting from the total amount of income on which the tax has already been paid in the preceding quarters.¹⁴⁸ Information returns as to payment of gross income to others are required in certain cases;¹⁴⁹ and withholding of the tax by employers is required as to payments to non-resident employees.¹⁵⁰

A parent corporation and any subsidiaries at least ninety-five per cent. owned by it may file a consolidated return in which income of each subsidiary from selling property or materials to the parent or another subsidiary is not included.¹⁵¹ In the case of failure to pay the tax prescribed, the taxpayer may be enjoined from engaging in business until the tax is paid, or a receiver of his property may be appointed.¹⁵²

The act also provides that stockholders of a corporation who receive distributions in liquidation on their stock are personally liable to the extent of such amounts received by them, for any unpaid gross income tax liability of the corporation itself.¹⁵³

The original Gross Income Tax Act was upheld by the Indiana Supreme Court in *Miles v. Department of Treasury*.¹⁵⁴ The court held that a tax on receipt of gross income was an excise tax imposed upon residents of the state upon the basis of domicile and (in the second opinion) upon non-residents for the privilege of receiving income from Indiana. Such a tax was, therefore, held not subject to the restrictions imposed by the uniformity clause of Article 10, Section 1, in the Indiana Constitution.

An appeal from the Indiana Supreme Court to the Supreme Court of the United States was dismissed for the reason that the appellants failed to show any interest entitling them to invoke the protection of the Federal Constitution.¹⁵⁵

¹⁴⁸ Acts of 1937, Ch. 117, Sec. 10.

¹⁴⁹ Acts of 1937, Ch. 117, Sec. 16.

¹⁵⁰ Acts of 1937, Ch. 117, Sec. 17.

¹⁵¹ Acts of 1937, Ch. 117, Sec. 9.

¹⁵² Acts of 1937, Ch. 117, Sec. 13, (c) and (d).

¹⁵³ Acts of 1937, Ch. 117, Sec. 8 (i).

¹⁵⁴ 193 N. E. 855, 199 N. E. 372 (1935).

¹⁵⁵ 298 U. S. 640, 56 Sup. Ct. 750 (1936).

The reasoning of the court in this case is more sound than that of the majority opinion in *Lutz v. Arnold*,¹⁵⁶ upholding the intangibles tax. The decision in both cases is based upon the fundamental proposition that the taxes involved are excise or privilege taxes rather than property taxes. The determination as to the intangibles tax seems to the writer to be fallacious, but sound in respect to the gross income tax, as income taxes are almost unanimously and clearly correctly held to be in the nature of excise taxes.

¹⁵⁶ *Supra*, note 140.

* This article is based upon a thesis prepared under the supervision of Professor Robert C. Brown, of Indiana University School of Law, who has summarized it so that it can be published as an article.